

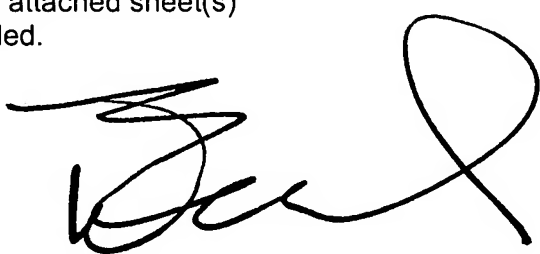
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PTO/SB/33 (07-05)

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<b>APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number 117622-00105
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/759,130	Filed January 20, 2004
	First Named Inventor Michael SMITH	
	Art Unit 3735	Examiner Karen E. Toth
	Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s) Note: No more than five (5) pages may be provided.	
I am the <input type="checkbox"/> Applicant/inventor  <input type="checkbox"/> Assignee of record of the entire interest See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)  <input checked="" type="checkbox"/> Attorney or agent of record Registration number 35,126  <input type="checkbox"/> Attorney or agent acting under 37 CFR 1.34 Registration number if acting under 37 CFR 1.34	 _____ Signature David J. Edmondson _____ Typed or printed name 202-772-5800 _____ Telephone number July 30, 2007 _____ Date	
Note: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.  <input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of	)	
Michael SMITH	)	Art Unit 3735
Patent Application No.: 10/759,130	)	Examiner: K. Toth
Confirmation No. 6639	)	Attorney Docket No.:
Filed: January 20, 2004	)	117622-00105
For: DEVICE FOR MEASURING	)	Date: July 30, 2007
PERIPHERAL VASCULAR FUNCTION	)	

**STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In support of the Pre-Appeal Brief Request for Review filed concurrently herewith, the Applicant, through undersigned counsel, hereby makes the following statement.

The present claimed invention involves measuring a peripheral pulse volume per length *PV* in the limb of the patient. The Final Rejection alleges that *Raines* teaches that limitation in column 6, lines 31-36. However, that portion of the specification actually teaches merely measuring “the amount of blood flowing beneath it with each heartbeat.” There is no teaching or suggestion to measure peripheral pulse volume *per length*. Therefore, the claims are not anticipated.

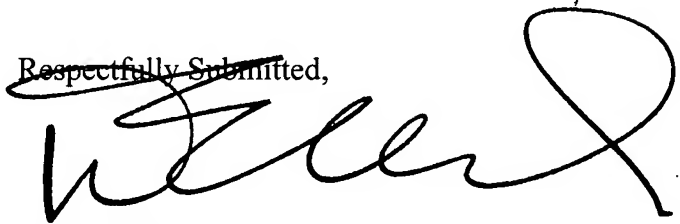
The Applicants further traverse the rejection of claims 2, 3, 8, 17, 18 and 23 under 35 U.S.C. § 103(a) over *Raines* in view of *Chio*. Since *Chio* does not overcome the

above-noted deficiency of *Raines*, the present claimed invention would not have been obvious over the combination of references. Moreover, with regard to claims 18 and 23, *Chio* calculates compliance in a different way, i.e.,  $dV/dP$  rather than  $PV/PP$ .

In light of the above, the Applicants respectfully submit that the application is in condition for allowance. Notice of such allowance is earnestly solicited.

Please charge any shortage of fees, or credit any overpayment thereof, to BLANK ROME LLP, Deposit Account No. 23-2185 (117622-00105). In the event that a petition for an extension of time is required to render this Amendment timely, and in the event that a separate petition either does not accompany this Amendment or is insufficient to render this Amendment timely, the Applicants hereby petition under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render this Amendment timely. Any fee due is authorized above.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Edmondson', written over a horizontal line.

David J. Edmondson  
Registration No. 35,126

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